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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,666	02/09/2004	Ramez Emile Necola Shehada	064693-0092	1472

7590 02/14/2006

MCDERMOTT, WILL & EMERY
Suite 3400
2049 Century Park East
Los Angeles, CA 90067

EXAMINER

HILL, LAURA C

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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101275666

EXAMINER

ART UNIT	PAPER
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20060207

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Office Action Summary

Application No.

10/775,666

Applicant(s)

NECOLA SHEHADA ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) 1-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/29/04, 3/31/05 & 6/15/05
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of claims 44-67 in the reply filed on 19 January 2006 is acknowledged. The traversal is on the ground(s) that claim 1 is not generic since claim 1 specifically further includes 'a drain portion configured to rest against a substantial length of tissue within the body cavity' and 'a plurality of drain holes spaced along substantially the entire length of the drain portion' (see Response to Restriction Requirement of September 19, 2005, pages 2-3). This is found persuasive, and therefore claim 1 is not generic and there are no generic claims. The restriction and species requirement as described on page 1 of the action dated 19 September 2005 is still deemed proper as belonging to Group I and within Group I, species figure 1A that contains the elongated conduit, first sensing system, processing system, and display. Therefore claims 44-67 containing these elements have been examined on the merits.

The requirement is deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 44-67 are rejected under 35 U.S.C. 102(b) as being anticipated by Lange et al. (US 6,751,499; herein 'Lange'). Regarding claims 44-48, 51, 56-60, and 63 Lange discloses a physiological monitoring system 100 comprising: components for measuring blood pressure, pulse, temperature, respiration and pain level (column 9, lines 25-28) that contact the skin surface (column 10, lines 14-17); a set of electrodes 12 on a sensor array/first, second and third sensing systems 13 (figures 4-5) having a color-

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coded strip which processes a pain signal using analog circuitry and presents the pain result as a specific color scale or gray scale intensity on a color display (column 9, lines 33-49) in a discrete reading format based on four levels of pain (column 9, lines 40-46). Lange further discloses an IV fluid container/drain placed within the body cavity and closed-loop analgesia system 140 that applies fluid into the body in combination with the physiological monitoring system (column 26, lines 33-45).

Regarding claims 50, 52-55, 61-62 and 64-67 Lange discloses fiber optic connections and transducers that convert electrical signals from electrodes/sensing elements to light signals (column 11, lines 62-column 12, line 4) and are thus affixed and embedded within the conduit (figure 22).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. D'Antonio (US 4,654,029) is cited for showing a monitoring system with fluid collection chamber 39, multiple sensors (sensor location unknown) for detecting multiple properties of drained fluid rather than tissue, and processing system with numerical value display output. Vari et al. (US 5,456,252) is cited for showing a physiology monitoring system 10 with fluorescence optical light spectrometer sensor 14 for determining metabolic state of an organ by monitoring pH and blood perfusion by detecting intensity of fluorescence within the organs. Frazee (WO 92/11803) is cited for showing cardiopulmonary monitoring system 100, which transmits and receives optical sensors to and from the interior of a blood vessel via a fiberoptic catheter 10.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill
Examiner
Art Unit 3761

LCH



TATYANA ZALUKAEVA
PRIMARY EXAMINER

